


POLICY

Approved by: Rebecca R. Hunter, Commissioner	Policy Number: 12-009
 Signature:	Supersedes: 11-010, 05-025
Application: Executive Branch Agencies and Employees	Effective Date: October 3, 2012
Authority: T.C.A. § 4-3-1703, T.C.A. § 4-21-101, T.C.A. § 8-30-104, T.C.A. § 8-50-103, T.C.A. § 8-50-104, T.C.A. § 10-7-503	Rule: Chapter 1120-07

Subject:

Investigations of Allegations of Illegal Discrimination and Harassment

It is the State's policy to promptly investigate allegations of illegal discrimination and harassment as defined by the State's Policy on Workplace Discrimination and Harassment. It is also the State's policy to ensure that these investigations are conducted in an impartial and appropriate manner.

Accordingly, all executive branch departments, agencies, boards and commissions and any other divisions of the executive branch of state government shall develop an internal policy that sets out the process that the agency will follow in investigating allegations of illegal discrimination and harassment. Each agency shall maintain a copy of its internal policy with the Department of Human Resources. Agencies shall submit any revisions to such internal policies to the Department upon implementation.

In addition to the requirements set out in the State's Policy "Workplace Discrimination and Harassment," each agency's internal policy shall include, at minimum, the following provisions:

1. The title of the person(s) or division that will be charged with investigating such complaints.
2. The title of the person to whom the investigator will report the results of the investigation.
3. A requirement that the investigator inform the complainant, accused and witnesses of the following limitations on confidentiality:

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge; provided it does not interfere with the department's ability to investigate the allegations, or to take corrective action. However, state law may prevent the state from maintaining total confidentiality of investigations. Therefore, the State does not guarantee confidentiality.

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4. A requirement that the investigator inform the complainant, accused, and witnesses of the State's policy concerning retaliation.
5. A requirement that the investigator communicate information concerning the allegations only to those to whom the investigator is authorized to report such matters.
6. A requirement that the agency's supervisors or other authorized agents use a standardized intake/referral form (Attachment 1) for every allegation of illegal discrimination and harassment.
7. A requirement that the investigator create an investigative memorandum using a standardized format (Attachment 2) for every complaint of illegal discrimination and harassment.
8. A requirement that the agency issue a letter to the accuser and accused concerning the outcome of the investigation.
9. In cases that result in discipline, a requirement that records of the disciplinary actions be maintained in the disciplined employee's human resources file. The maintenance of such disciplinary records, however, is subject to the Department of Human Resource's rules concerning the retention of disciplinary records.
10. A requirement that documents generated by the investigation and any subsequent disciplinary action shall be preserved for five (5) years as required under RDA 5 2963.

Questions regarding this policy may be directed to the Office of the General Counsel.

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Attachment 1

Intake/Referral Form

Statement Concerning Confidentiality

Pursuant to Tennessee Code Annotated § 10-7-503(a)(2)(A), "all state . . . records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Accordingly, the State cannot and does not guarantee the confidentiality of this document or any notes, files, reports, or other documents, whether created by the State or received from the complainant, accused, or witnesses.

NAME OF COMPLAINANT OR PERSON REPORTING EVENT: _____

TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

WORK: _____

PREFERRED: _____

NAME OF AGENCY AND DIVISION INVOLVED: _____

NAME OF PERSON(S) WHO ALLEGEDLY DISCRIMINATED AGAINST YOU OR HARASSED YOU?

RELATIONSHIP OF ALLEGED ACCUSER TO YOU (I.E. DIRECT SUPERVISOR, CO-WORKER):

DATE OF EARLIEST OCCURRENCE OF EVENTS? _____

DATE OF LATEST OCCURRENCE OF EVENTS? _____

HOW WERE YOU DISCRIMINATED AGAINST (E.G. DISCIPLINARY ACTION, PROMOTION, DEMOTION, HOSTILE ENVIRONMENT)?

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EXPLAIN AS CLEARLY AS POSSIBLE WHAT HAPPENED, INCLUDING WHO DID WHAT, WHERE IT HAPPENED, WHO WAS INVOLVED, ETC. PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

EXPLAIN WHY YOU BELIEVE THESE EVENTS OCCURRED:

DESCRIBE HOW OTHERS WERE TREATED DIFFERENTLY THAN YOU:

WERE THERE OTHER EMPLOYEES WHO WERE TREATED BETTER IN SIMILAR CIRCUMSTANCES?

PLEASE CHECK ONE: YES ____ NO ____

IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED BETTER AND DESCRIBE HOW THEY WERE TREATED BETTER:

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PLEASE LIST BELOW ANY PERSONS (WITNESSES, FELLOW EMPLOYEES, SUPERVISORS, OTHERS) WHO MAY HAVE ADDITIONAL INFORMATION TO SUPPORT OR CLARIFY THIS COMPLAINT. EXPLAIN WHAT INFORMATION EACH CAN PROVIDE.

WHAT EXPLANATION DO YOU THINK THE AGENCY OR ACCUSED WILL GIVE AS TO WHY YOU WERE TREATED IN THIS MANNER?

PLEASE IDENTIFY ANY OTHER INFORMATION (INCLUDING DOCUMENTARY EVIDENCE SUCH AS DIARIES, JOURNALS, RECORDINGS, EMAILS, VOICEMAILS, CORRESPONDENCE, ETC.) THAT YOU THINK IS RELEVANT TO THIS MATTER.

WHAT DO YOU WANT TO HAPPEN AS A RESULT OF THIS COMPLAINT?

IF YOU HAVE TOLD ANYONE ELSE ABOUT THIS MATTER, PLEASE LIST THE NAME(S) AND RELATIONSHIP(S) (CO-WORKER, FAMILY MEMBER, ETC.)

SIGNATURE OF COMPLAINANT: _____

DATE: _____

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IF COMPLETED BY SUPERVISOR OR AGENT OF STATE AS A RESULT OF INTERVIEWING A COMPLAINANT,
PLEASE PROVIDE THE FOLLOWING INFORMATION:

PRINTED NAME: _____

SIGNATURE: _____

TITLE: _____

AGENCY AND/OR DIVISION: _____

WORK TELEPHONE NUMBER: _____

DATE COMPLAINT RECEIVED: _____

DATE FORM COMPLETED: _____

REASON FOR DELAY, IF ANY, BETWEEN THE DATE THE COMPLAINT WAS RECEIVED AND THE DATE THE
FORM WAS COMPLETED:

NAME AND TITLE OF PERSON TO WHOM THE FORM WAS FORWARDED FOR ACTION:

DATE ON WHICH THE FORM WAS FORWARDED:

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Attachment 2

Investigation Memorandum Format

1. Complainant's name, job title, agency, location
2. Initiation of investigation:
 - a. Persons involved in conducting investigation
 - b. Date complaint received by agency
 - c. Person in agency who initially received complaint
 - d. Date investigation began and, if applicable, reason for any delay
3. Description of complaint
 - a. General nature of events giving rise to complaint, including dates of alleged events
 - b. Person(s) accused of inappropriate behavior and organizational relationship to complainant
4. Statements and evidence gathered in the investigation
 - a. Complainant
 - i. Specific allegation(s). If more than one allegation, list each separately
 - ii. Additional witnesses named by complainant
 - iii. Resolution desired by complainant
 - b. Person accused of inappropriate behavior. If more than one, list each separately
 - i. Specific response(s) to allegation(s). If more than one, list each separately
 - ii. Additional witnesses named by accused
 - c. Witnesses interviewed
 - i. Name and job title. If more than one, list each separately
 - ii. Evidence about specific allegations (noting firsthand knowledge v. secondhand knowledge)
 - iii. Additional witnesses, if any
5. Summary of evidence
 - a. Corroboration of specific allegations
 - b. Non-corroboration of specific allegations
 - c. Other pertinent information
6. Conclusions concerning violation of policy. INCLUDE ONLY AT THE DIRECTION OF THE AGENCY.
7. Appendices
 - a. List of potential witnesses not interviewed and reason
 - b. List of attachments (documentary evidence)